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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/521,496	06/28/2005	Jonathan S. Stamler	24862-501 NATL	9240

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EXAMINER	
NOAKES, SUZANNE MARIE	
ART UNIT	**PAPER NUMBER**
1653	

DATE MAILED: 01/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/521,496	STAMLER, JONATHAN S.	
	Examiner	Art Unit	
	Suzanne M. (Mayer) Nockes Ph.D.	1653	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *6-28-2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-73* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) _____ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☒ Claim(s) *1-73* are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claims 1-16, drawn to a method of treating or preventing myocardial oxidative or nitrosative stress in a subject by administering erythropoietin.

Group II, claims 17-18, drawn to a method of modulating a cardioprotective signaling pathway by administering erythropoietin.

Group III, claims 19-35, drawn to drawn to a method of treating or preventing cardiac injury in a subject by administering erythropoietin.

Group IV, claims 36-38, drawn to a method of preventing organ or tissue damage during organ or tissue transplantation by administering erythropoietin.

Group V, claims 39-47, drawn to a method of treating a survivor of a myocardial infarction by administering erythropoietin.

Group VI, claims 48-51, drawn to a method of preventing or reducing the severity of ischemia-reperfusion injury in a subject by administering erythropoietin.

Group VII, claims 52-59, drawn to method of pre-conditioning a subject at risk for a cardiac injury due to a surgical procedure by administering erythropoietin.

Group VIII, claims 60-64 and 71-73, drawn to a method of increasing beta-receptor in a subject suffering from cardiac injury by administering erythropoietin.

Group IX, claims 65-70, drawn to a method of preventing reduced sensitivity or a method of increasing sensitivity to one or more cardiostimulatory compounds in a subject suffering from a risk of a cardiac injury by administering erythropoietin.

2. The inventions listed as Groups I-IX do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons. The methods of Groups I-IX, each has a different scope, they are directed to various methods using the same compound (i.e. erythropoietin) for different purposes. Although, Inventions I-IX are related, the etiology or cause for the aforementioned treatment or prevention are divergent and a search conducted for one would not necessarily overlap with a search conducted for another. Further, Inventions I-IX each differ from the other in method of treating and/or preventing steps, parameters and purposes used, and as such, one does not require the other for ultimate use and effect. Thus, the various methods using the same compound (i.e. erythropoietin) as recited above do not corresponds to the same technical feature and are not connected in design, operation or effect because the differ in method steps, parameters and reagents used, and as such, the methods as grouped are different from each other because they represent different technical features and different inventive endeavors. Hence, the compounds used in different methods have different structures, functions and different effects. For example, Group I and Group V are directed to methods of treating myocardium; however, Group I treats or prevents myocardial oxidative or nitrosative stress in a subject while Group V treats myocardial infarction. Thus, the Groups require different patent and literature searches and a reference teaching treatment of myocardial oxidative or nitrosative stress will not teach treatment of myocardial infarction and vice versa. Similarly, a method treating or preventing cardiac injury (Group III) or a method of preventing organ or tissue damage

during organ or tissue transplantation (Group IV) or a method of preventing or reducing the severity of ischemia-reperfusion injury (Group IV) is not the same as a method of modulating a cardioprotective signaling pathway (Group II) or a method of pre-conditioning a subject at risk for a cardiac injury due to surgical procedure (Group VII) or a method of increasing beta-receptor density in a subject suffering from cardiac injury (Group VIII) or a method of preventing reduced sensitivity or a method of increasing sensitivity to one or more cardiostimulatory compounds in a subject suffering from a risk of cardiac injury (Group IX) or vice versa because as stated above, the etiology or cause for the aforementioned treatment or prevention are divergent, and as such, they require different patent and literature searches. Therefore, Groups I-IX do not share the same technical features, the inventions do not relate to a single inventive concept.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Suzanne M. Noakes, Ph.D. whose telephone number is 571-272-2924. The examiner can normally be reached on Monday to Friday, 7.30am to 4.00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jon Weber can be reached on 571-272-0925. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SMN
30 December 2005

ROBERT A. WAX
PRIMARY EXAMINER